

(e) *Special rule for certifying sales.* For purposes of section 6158(a) and paragraph (b)(2) of this section, in the case of a sale which takes place after July 7, 1970, and before January 1, 1977, a certification by the Federal Reserve Board shall be treated as made before the sale if application for such certification was made before January 1, 1977.

(f) *Tax attributable to sales.* The tax under chapter I of the Code attributable to sales with respect to which an election under section 6158 has been made shall be the amount, if any, by which the tax under chapter I on the taxable income of the qualified bank holding corporation (computed without regard to section 6158) for the taxable year during which the sales occur exceeds the greater of—

(1) The tax under chapter I for such year on the taxable income of the corporation exclusive of gains on sales of

property with respect to which an election under section 6158 has been made, or

(2) The tax under chapter I for such year on the taxable income of the corporation exclusive of gains and losses on all sales of the type of property (either bank property or prohibited property) with respect to which an election under section 6158 has been made.

[T.D. 7570, 43 FR 52057, Nov. 8, 1978. Redesignated by T.D. 8435, 57 FR 43896, Sept. 23, 1992]

§ 301.9100-12T Various elections under the Tax Reform Act of 1976.

(a) *Elections covered by temporary rules.* The sections of the Internal Revenue Code of 1954, or of the Tax Reform Act of 1976, to which this section applies and under which an election or notification may be made pursuant to the procedures described in paragraphs (b) and (d) are as follows:

(1) FIRST CATEGORY

Section	Description of election	Availability of election
167(o) of Code	Substantially rehabilitated historic property	Additions to capital account occurring after June 30, 1976, and before July 1, 1981.
172(b)(3)(E) of Code	Forego of carryback period	Any taxable year ending after December 31, 1975.
402(e)(4)(L) of Code	Lump sum distributions from qualified plans.	Distributions and payments made after December 31, 1975, in taxable years beginning after such date.
812(b)(3) of Code	Forego of carryback period by life insurance companies.	Any taxable year ending after December 31, 1975
819A of Code	Contiguous country branches of domestic life insurance companies.	All taxable years beginning after December 31, 1975.
825(d)(2) of Code	Forego of carryback period by mutual insurance companies.	Any taxable year ending after December 31, 1975.
911(e) of Code	Foregoing of benefits of section 911	All taxable years beginning after December 31, 1975.

(2) SECOND CATEGORY

185(d) of Code	Amortization of railroad grading and tunnel bores.	All taxable years beginning after December 31, 1974.
1057 of Code	Transfer to foreign trusts etc	Any transfer of property after October 2, 1975.

(b) *Time for making election or serving notice—*(1) *Category (1).* A taxpayer may make an election under any section referred to in paragraph (a)(1) of this section for the first taxable year for which the election is required to be made or for the taxable year selected by the taxpayer when the choice of the taxable year is optional. The election must be made by the later of the time, including extensions thereof, prescribed by law for filing income tax returns for such taxable year or March 8, 1977.

(2) *Category (2).* A taxpayer may make an election under any section referred to in paragraph (a)(2) for the first taxable year for which the election is allowed or for the taxable year selected by the taxpayer when the choice of the taxable year is optional. The election must be made (i) for any taxable year ending before December 31, 1976, for which a return has been filed before January 31, 1977, by filing an amended return, provided that the period of limitation for filing claim for credit or refund of overpayment of tax, determined from the time the return

was filed, has not expired or (ii) for all other years by filing the income tax return for the year for which the election is made not later than the time, including extensions thereof, prescribed by law for filing income tax returns for such year.

(c) *Certain other elections.* The elections described in this paragraph shall be made in the manner and within the time prescribed herein and in paragraph (d) of this section.

(1) The following elections under the Tax Reform Act of 1976 shall be made:

(i) Section 207(c)(3) of Act; change from static value method of accounting; all taxable years beginning after December 31, 1976.

by filing Form 3115 with the National Office of the Internal Revenue Service before October 5, 1977.

(ii) Section 604 of Act; travel expenses of State legislators; all taxable years beginning before January 1, 1976.

by filing an amended return for any taxable year for which the period for assessing or collecting a deficiency has not expired before October 4, 1976, by the last day for filing a claim for refund or credit for the taxable year but in no event shall such day be earlier than October 4, 1977.

(iii) Section 804(e)(2) of Act; retroactive applications of amendments to property described in section 50(a) of Code; certain taxable years beginning before January 1, 1975.

by filing amended returns before October 5, 1977, for all taxable years to which applicable for which the period of limitation for filing claim for credit or refund for overpayment of tax has not expired.

(iv) Section 1608(d)(2) of Act; election as a result of determination as defined in section 859(c) of the Code; determinations made after October 4, 1976.

by filing a statement with the district director for the district in which the taxpayer maintains its principal place of business within 60 days after such determination.

(v) Section 2103 of Act; treatment of certain 1972 disaster losses. Any taxable year in which payment is received or indebtedness is forgiven.

by filing a return for the taxable year or an amended return by the last day for making a claim for credit or refund for the taxable year but in no event shall such day be earlier than October 4, 1977.

(2) [Reserved]

(3) The election provided for in section 167(e)(3) of the Code shall be made in accordance with §1.167(e)-1(d) except that the election shall be applicable for the first taxable year of the taxpayer beginning after December 31, 1975.

(d) *Manner of making election.* Unless otherwise provided in the return or in a form accompanying a return for the taxable year, the elections described in paragraphs (a) and (c) (except paragraphs (c)(1)(i), and (c)(5)) shall be made by a statement attached to the return (or amended return) for the taxable year. The statement required when making an election pursuant to this section shall indicate the section under which the election is being made and shall set forth information to identify the election, the period for which it applies, and the taxpayer's basis or entitlement for making the election.

(e) *Effect of election—(1) Consent to revoke required.* Except where otherwise provided by statute or except as provided in subparagraph (2) of this paragraph, an election to which this section applies made in accordance with this section shall be binding unless consent to revoke the election is obtained from the Commissioner. An application for consent to revoke the election will not be accepted before the promulgation of the permanent regulations relating to the section of the Code or Act under which the election is made. Such regulations will provide a reasonable period of time within which taxpayers will be permitted to apply for consent to revoke the election.

(2) *Revocation without consent.* An election to which this section applies, made in accordance with this section, may be revoked without the consent of the Commissioner not later than 90 days after the permanent regulations relating to the section of the Code or Act under which the election is made are filed with the Office of the Federal Register, provided such regulations grant taxpayers blanket permission to revoke that election within such time

without the consent of the Commissioner. Such blanket permission to revoke an election will be provided by the permanent regulations in the event of a determination by the Secretary or his delegate that such regulations contain provisions that may not reasonably have been anticipated by taxpayers at the time of making such election.

(f) *Furnishing of supplementary information required.* If the permanent regulations which are issued under the section of the Code or Act referred to in this section to which the election relates require the furnishing of information in addition to that which was furnished with the statement of election filed pursuant to paragraph (d) of this section, the taxpayer must furnish such additional information in a statement addressed to the district director, or the director of the regional service center, with whom the election was filed. This statement must clearly identify the election and the taxable year for which it was made. If such information is not provided the election may, at the discretion of the Commissioner, be held invalid.

(Sec. 191(b), Internal Revenue Code of 1954 (90 Stat. 1916, 26 U.S.C. 191(b))

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§ 301.9100-14T Individual's election to terminate taxable year when case commences.

(a) *Scope.* The regulations prescribed in this section provide rules for making the election under section 1398(d)(2) to terminate the taxable year of an individual taxpayer.

(b) *Availability of election.* This election is available to an individual taxpayer in a case commenced after March 24, 1981, under chapter 7 (relating to liquidations) or chapter 11 (relating to reorganizations) of title 11 of the United States Code. If the case is dismissed, the taxpayer cannot make the election, and an election previously

made will be void. For purposes of this section, a partnership is not treated as an individual. If the taxpayer making the election is married (within the meaning of section 143), the election is available to the taxpayer's spouse, but only if the spouse is eligible to file, and does file, a joint return with the taxpayer for the taxable year ended as a result of the election.

(c) *Effect of election.* The election terminates the taxable year of the taxpayer (and of a spouse who joins in the election) on the day before the commencement date of the case. A new taxable year begins on the commencement date and (unless terminated earlier) ends on the date on which the taxpayer's taxable year in which the case commenced would have ended if the election had not been made.

(d) *Time and manner.* A taxpayer to whom the election is available makes the election by filing a return for the short taxable year ending the day before commencement of the case (the "first short taxable year") on or before the 15th day of the fourth full month following the end of that first short taxable year. The spouse of such a taxpayer makes the election by making a joint return with the taxpayer for that first short taxable year within the time prescribed in the preceding sentence. To facilitate processing, the taxpayer should write "Section 1398 Election" at the top of the return. A taxpayer may also make the election by attaching a statement of election to an application for extension of time for filing a return that satisfies the requirements under section 6081 for the first short taxable year. The application for extension must be submitted under section 6081 on or before the due date of the return for the first short taxable year. The statement must state that the taxpayer elects under section 1398(d)(2) to close his or her taxable year as of the day before commencement of the case. If the taxpayer's spouse elects to close his or her taxable year, the spouse must join in the application for extension and in the statement of election. If a joint return is not filed for the first short taxable year, the election of the spouse made with the application is void.